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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

LOUIS BERYL,

Plaintiff,

v.

NAVIENT CORPORATION, et al.,

Defendants.

Case No. 20-cv-05920-LB

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

INTRODUCTION

Plaintiff Louis Beryl started an online student-lending company called Earnest, Inc. Defendant Navient Corporation — which services and collects private and federal student loans through its subsidiary Navient Solutions LLC — acquired Earnest, Inc. for approximately \$155 million and hired Mr. Beryl and his team to run a new Navient Corporation entity called Earnest LLC. After several months, Navient fired Mr. Beryl, who sued Navient for (1) severance pay due to him under an executive-severance plan, in violation of ERISA § 502(a)(1)(B), (2) breach of fiduciary duties for the denial of benefits, in violation of ERISA § 502(a)(3), (3) breach of his employment contract, and (4) waiting-time penalties under the California Labor Code. A jury trial on the breach-of-contract claim (against defendants Navient Corporation, Navient Solutions, and Earnest LLC) resulted in a verdict in Mr. Beryl's favor. Claims one and two (against Navient Corporation and the Navient Corporation Executive Severance Plan for Senior Officers (the Plan)) are governed by

1 ERISA, 29 U.S.C. §§ 1001–1461. The court held a bench trial (at the same time as the jury trial)
2 under Rule 52 on the ERISA claims and the claim for waiting-time penalties under the California
3 Labor Code. *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1094–95 (9th Cir. 1999).¹ Based on the
4 evidence at trial and jury findings that bind the court, Navient Corporation wrongfully failed to pay
5 Mr. Beryl his severance benefits and waiting-time penalties: \$800,000 (salary and annual bonus of
6 \$400,000 each and a multiplier of one), \$33,333 (the target bonus for 2018),² \$54,000 (the eighteen-
7 month value of lost medical, dental, and vision benefits), and \$33,333.33 in waiting-time penalties
8 under California Labor § 203. The total is \$920,666.33.

10 FINDINGS OF FACT

11 The parties stipulated to the following facts.³

- 12 1. In 2013, Mr. Beryl co-founded an online student lending company called Earnest, Inc.
- 13 2. In November 2017, Navient Corp. acquired Earnest, Inc. for approximately \$155 million.
- 14 3. Navient Solutions LLC services and collects existing private and federal student loans.
- 15 4. Navient Corp. formed Earnest LLC, which is located in San Francisco.
- 16 5. Navient Corp. entered into a written employment agreement with Mr. Beryl (the
Employment Agreement) on October 4, 2017. The Employment Agreement is Trial Exhibit 1.⁴
- 17 6. “The Employment Agreement provided that Mr. Beryl would have the corporate title of
Senior Vice President of Navient Solutions, LLC (‘NSL’) and the CEO of Earnest LLC.”⁵
- 18 7. The Employment Agreement provided that Mr. Beryl would “report to Tim Hynes[],
Navient’s Executive Vice President, Consumer Lending.”⁶

22
23 ¹ Compl. – ECF No. 1 (all claims); Jury Instrs. – ECF No. 81 at 9–13 (only the breach-of-contract claim
24 was tried to the jury); Verdict – ECF No. 88 (same); Pl.’s Opening Arg. – ECF No. 96 at 5, 7–15 (claims
tried in the bench trial). Citations refer to material in the Electronic Case File (ECF); pinpoint citations
are to the ECF-generated page numbers at the top of documents.

25 ² This amount is undisputed. Mot. – ECF No. 96 at 11; Opp’n – ECF No. 100 at 11.

26 ³ Joint Stipulated Facts – ECF No. 49-8 at 2–3 (nos. 1–19).

27 ⁴ Trial Ex. 1 – ECF 100-1 at 4–18 (Navient-LB 000393–000407).

28 ⁵ *Id.* at 4 (Navient-LB 000393).

⁶ *Id.*

1 8. The Employment Agreement provided that Mr. Beryl would be paid a base salary at the
2 rate of \$300,000 per year.⁷

3 9. The Employment Agreement provided that Mr. Beryl would be “eligible to participate in
4 the Navient Corporation Executive Severance Plan for Senior Officers [the “Severance Plan”].”
5 The Severance Plan is Trial Exhibit 17.⁸

6 10. The Severance Plan is governed by ERISA.

7 11. The Severance Plan provides, in part, that upon termination “without cause,” “an Eligible
8 Officer will be entitled to receive a severance payment (‘Severance Payment’) and continuation of
9 medical, dental and vision insurance benefits and outplacement services, all as provided herein. . . .”⁹

10 12. Mr. Beryl was an “Eligible Officer” per the terms of the Severance Plan.¹⁰

11 13. The Severance Plan entitled Mr. Beryl to certain severance payments if Navient Corp.
12 decided to terminate his employment “without cause.”¹¹

13 14. The Severance Plan defines “For Cause” (and the jury was instructed with that definition):

14 **2.04. “For Cause”** means a determination by the Committee (as defined herein)
15 that there has been a willful and continuing failure of an Eligible Officer to perform
16 substantially his duties and responsibilities (other than as a result of Eligible
17 Officer’s death or Disability) and, if in the judgment of the Committee such willful
18 and continuing failure may be cured by an Eligible Officer, that such failure has not
19 been cured by an Eligible Officer within ten (10) business days after written notice
20 of such was given to Eligible Officer by the Committee, or that Eligible Officer has
21 committed an act of Misconduct (as defined below). For purposes of this Plan,
22 “Misconduct” means: (a) embezzlement, fraud, conviction of a felony crime,
23 pleading guilty or nolo contendere to a felony crime, or breach of fiduciary duty or
24 deliberate disregard of the Corporation’s Code of Business Code; (b) personal
25 dishonesty of Eligible Officer materially injurious to the Corporation; (c) an
26 unauthorized disclosure of any Proprietary Information; or (d) competing with the
27 Corporation while employed by the Corporation or during the Restricted Period, in

28 ⁷ *Id.*

25 ⁸ *Id.* at 5 (Navient-LB 000394); Trial Ex. 17 – ECF No. 100-1 at 24–42 (pp. 1–18, Navient-LB
000444–000461).

26 ⁹ Trial Ex. 17, § 3.02 – ECF No. 100-1 at 27–28 (pp. 3–4, Navient-LB 000444–000445).

27 ¹⁰ *Id.* § 3.01 – ECF No. 100-1 at 27 (Navient-LB 000446).

28 ¹¹ *Id.* § 3.02 – ECF No. 100-1 at 27–28 (pp. 3–4, Navient-LB 000444–000445).

1 contravention of the non-competition and non-solicitation agreements substantially
2 in the form provided in Exhibit C upon termination of employment.¹²

3 15. The Severance Plan provided that, if Mr. Beryl were to be terminated without cause, he
4 would be entitled to continue to participate in any medical, dental, and vision insurance plans
5 generally available to the senior management of Navient Corp. “[f]or eighteen (18) months (or
6 twenty-four (24) months if the Eligible Officer is the Chief Executive Officer) following the
7 Eligible Officer’s Termination Date.”¹³

8 16. Navient Corp. terminated Mr. Beryl’s employment on January 24, 2018.

9 17. When Navient Corp. informed Mr. Beryl of the termination of his employment, it told him
10 that he would not receive severance benefits because Navient Corp. believed that it had cause to
11 terminate Mr. Beryl’s employment.

12 18. Mr. Beryl made a claim for benefits pursuant to the Severance Plan on March 13, 2018.

13 19. Navient Corp. denied Mr. Beryl’s claim for benefits under the Severance Plan on June 7,
14 2018.

15 The parties agreed that the jury’s fact findings bind the court:¹⁴

16 1. Did Navient have cause to terminate Mr. Beryl’s employment?

17 Answer: No

18 . . .

19 3. Did Navient and Mr. Beryl agree that Mr. Beryl’s annual base salary would be
20 increased from \$300,000.00 to \$400,000.00?

21 Answer: Yes

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26 ¹² *Id.* § 2.04 – ECF No. 100-1 at 26 (p. 2, Navient-LB 000445); Jury Instr. – ECF No. 81 at 13.

27 ¹³ *Id.* § 3.02(c) – ECF No. 100-1 at 28 (p. 4, Navient-LB 000447).

28 ¹⁴ Joint Submission Regarding Trial of ERISA Claims – ECF No. 65 at 3; Verdict – ECF No. 88 at 1–2.

1 4. Did Navient and Mr. Beryl agree that Mr. Beryl's annual bonus amount would
 2 be increased from 75% of his annual base salary to 100% of his annual base salary?

3 Answer: Yes

4 The Plan defines those eligible for benefits under it: "**3.01. Eligible Officers.** Officers of
 5 Navient Corporation and its wholly owned subsidiaries with the corporate title of Senior Vice
 6 President or above are eligible for benefits under this Plan. . . ."¹⁵

7 Mr. Beryl's employment agreement said, "On behalf of E Parent, Inc.[], as the anticipated
 8 controlling shareholder of Earnest, Inc.[], I am pleased to offer you continued employment, under
 9 revised terms, as Chief Executive Officer of Earnest located in San Francisco, California. You will
 10 have the corporate title of Senior Vice President of Navient Solutions, LLC (together with Navient
 11 Corporation, its parent and the parent of E Parent, hereafter 'Navient'), and you will report to Tim
 12 Hynes, Navient's Executive Vice President, Consumer Lending."¹⁶ "Additionally, you will be
 13 eligible to participate in the Navient Corporation Executive Severance Plan for Senior Officers. . . ."¹⁷

14 The Plan defines average bonus:

15 **2.01 "Average Bonus"** means the annualized performance bonus compensation
 16 calculated under this Plan for the rolling 24-month period immediately prior to the
 17 Eligible Officer's Termination Date, including as a full month the month during
 18 which the Termination Date occurs. Only bonuses paid or payable under the
 19 Corporation's annual management incentive plan will be used for purposes of
 20 calculating Average Bonus under this Plan; any other bonus payments will be
 21 disregarded. An example of a calculation of the Average Bonus portion of a
 22 Severance Payment according to the Plan is attached hereto as Exhibit A. For
 23 purposes of calculating Average Bonus under the Plan for the current fiscal year, the
 24 Eligible Officer's base salary and target bonus at the Termination Date will be used
 25 and the Corporate performance scores from all completed quarters during the
 26 relevant portion of the fiscal year will be used. Notwithstanding anything to the
 27 contrary herein, if an Eligible Officer has fewer than 24 months of employment with
 28 the Corporation as of his or her Termination Date, then "Average Bonus" means the
 29 annualized performance bonus compensation calculated as described above but
 30 prorated for the portion of the rolling 24 month period that is represented by the time
 31 from the Eligible Officer's date of hire to the Eligible Officer's Termination Date.

26 ¹⁵ Trial Ex. 17, § 3.01 – ECF No. 100-1 at 27 (p. 3, Navient-LB 000446).

27 ¹⁶ Trial Ex. 1 – ECF No. 100-1 at 4 (Navient-LB 000393).

28 ¹⁷ *Id.* at 5 (Navient-LB 00394).

1 An example of a calculation of the Average Bonus portion of a Severance Payment
2 according to the previous sentence is attached hereto as Exhibit B. An Eligible
3 Officer who was employed by SLM Corporation or its affiliates on April 30, 2014,
4 and who has been continuously employed by the Corporation or its affiliates from
and after April 30, 2014, shall have his service as an employee of SLM Corporation
or its affiliates, and any performance bonus compensation paid during that period of
service, included for purposes of this Section 2.01.¹⁸

5 Mr. Beryl's employment agreement said the following about his average bonus:

6 For purposes of the Navient Corporation Executive Severance Plan for Senior
7 Officers, your "Average Bonus" shall equal your target annual incentive bonus until
8 you have been paid an annual incentive bonus with respect to 2017 and, after such
time, your "Average Bonus" shall be determined in accordance with the plan.¹⁹

9 . . .

10 You will be eligible to receive an annual incentive bonus equal to 75% of your
11 annual base salary [increased, as the jury verdict shows, to 100%], based on
12 achievement of measurable specific performance goals determined by Navient in
13 good faith, after consultation with you, pursuant to an incentive plan established by
14 Navient in its discretion. This bonus will have a maximum upside of 50% tied to
15 exceptional goal achievement, for a maximum potential payout equal to 112.5% of
16 your annual base salary. Bonus amounts will be paid in a single lump-sum within
two and one-half months following the close of Navient's fiscal year to which the
bonus relates. For the 2017 calendar year, your bonus amount will be prorated based
on the number of calendar days in 2017 following the Closing Date [defined
elsewhere in the agreement as the Closing Date defined in the Merger Agreement
between Navient and Earnest Inc.].²⁰

17 In February 2018, Navient paid Mr. Beryl a bonus of \$37,500 for calendar year 2017.²¹

18 The Plan's provision about severance benefits is as follows:

19 **3.02 Severance Benefits.** (a) An Eligible Officer will be entitled to receive a
20 severance payment ("Severance Payment") and continuation of medical, dental and
21 vision insurance benefits and outplacement services, all as provide herein, after any
of the following events[:] . . . (II) upon a Termination of Eligible Officer's
Employment Without Cause. . . .

22 (b) The amount of the Severance Payment will equal the sum of the Eligible Officer's
23 Base Salary plus the Eligible Officer's Average Bonus times a multiplier plus a cash
payment equal to the Eligible Officer's target annual bonus amount for the year in

25 ¹⁸ Trial Ex. 17, § 2.01 – ECF No. 100-1 at 25–26 (pp. 1–2, Navient-LB 000444–000445).

26 ¹⁹ Trial Ex. 1 – ECF No. 100-1 at 5 (Navient-LB 000394).

27 ²⁰ *Id.* at 100-1 at 5–6 (Navient-LB 000394–000395) (definition of annual incentive bonus), 4 (Navient-
LB 000393) (definition of Closing Date).

28 ²¹ Trial Ex. 37 – ECF No. 100-1 at 21 (Navient-LB 000248).

1 which the Termination Date occurs, such target bonus amount to be prorated for the
2 full number of months in the final year that the Eligible Officer was employed by
3 [Navient]. The multiplier for Eligible Officers with the title of Chief Executive Officer
4 will be two (2). The multiplier for all other Eligible Officers will be one (1).

5 (c) For eighteen (18) months (or twenty-four (24) months if the Eligible Officer is
6 the Chief Executive Officer) following the Eligible Officer's Termination Date, the
7 Eligible Officer and his or her eligible dependents or survivors will be entitled to
8 continue to participate in any medical, dental and vision insurance plans generally
9 available to the senior management of the Corporation. . . ; provided that if the
10 Corporation determines it cannot provide such continued coverage without
11 potentially violating applicable law, the Corporation shall in lieu thereof provide to
12 the Eligible Officer a taxable monthly payment in an amount equal to the portion of
13 the monthly premium that the Corporation would otherwise be required to pay under
14 this Section 3.02(c) to continue the Eligible Officer's coverage by such medical,
15 dental and vision benefit plans (based on the premium for the first month of coverage
16 following the Eligible Officer's Termination Date), which payment will commence
17 in the month following the month in which the Eligible Officer's Termination Date
18 occurs and end on the final day of the applicable continuation period described in
19 this Section 3.02(c). An Eligible Officer and his or her eligible dependents will cease
20 to be covered under the foregoing medical, dental and/or vision insurance plans (or,
21 if taxable medical payments are being provided as described above, will cease to
22 receive such payments) if he or she becomes eligible to obtain coverage under
23 medical, dental and/or vision insurance plans of a subsequent employer.²²

24 Mr. Beryl testified at trial that the cash value of his medical, dental, and vision benefits
25 following his wrongful termination was \$72,000 (based on twenty-four months of coverage under
26 the Severance Plan for a CEO).²³ The testimony was undisputed. The court finds that the cash
27 value for twenty-four months is \$72,000, which is \$3,000 per month. If the term of coverage is
28 eighteen months, the total value is \$54,000.

29 The Plan has an integration clause: “**6.09. Whole Agreement.** This Plan contains all the
30 legally binding understandings and agreements between the Eligible Officer and the Corporation
31 pertaining to the subject matter thereof and supersedes all such agreements, whether oral or in
32 writing, previously entered into between the parties.”²⁴ It also has a provision about the effect of
33 employment contracts: “**1.03. Employment Contracts Govern.** . . . To the extent that an Eligible
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26 ²² Trial Ex. 17, § 3.02 – ECF 100-1 at 27–28 (pp. 3–4, Navient-LB 000446–000447).
27
28 ²³ This amount is undisputed. Mot. – ECF No. 96 at 10; Opp'n – ECF No. 100 at 14 (accepting amount).
29 ²⁴ Trial Ex. 17, § 6.09 – ECF No. 100-1 at 32 (p. 8, Navient-LB 000451).

1 Officer is party to an employment or other Contract or agreement that provides for any severance
2 payments upon such Eligible Officer's termination of employment with the Corporation or any of
3 its subsidiaries, then that contract or agreement governs, and not this Plan. Upon expiration of
4 such contract or agreement, this Plan will govern.”²⁵

5 The decision to terminate Mr. Beryl is reflected in the Navient Corporation Employee Benefits
6 Fiduciary Committee's meeting minutes on January 23, 2018. The minutes set forth the Severance
7 Plan's “for cause” provision (see *supra*) and recounts the grounds for the Committee's decision:

8 Mr. Hynes explained that he is the direct supervisor of Mr. Beryl. He then recounted
9 his interactions with Mr. Beryl since Navient's acquisition of Earnest in November
10 2017, noting that Mr. Beryl had spent significant time and resources attempting to
11 renegotiate his personal compensation and the financial targets established for . . .
12 Earnest, both of which had been agreed upon in connection with and prior to the
13 acquisition. He noted that during this time, Mr. Beryl repeatedly missed deadlines for
14 providing a detailed 2018 business plan for Earnest. Finally, Mr. Hynes explained
15 that Mr. Beryl to-date had not provided a detailed 2018 business plan for Earnest,
16 and that Mr. Hynes intended to terminate Mr. Beryl's employment.

17 Mr. Hynes responded to various questions from the Committee regarding Mr.
18 Beryl's actions. Following a discussion, the Committee determined that (i) Mr.
19 Beryl's actions (including his failure to act) constitute a willful and continuing
20 failure to substantially perform his duties and responsibilities as Chief Executive
21 Officer of Earnest, and that (ii) such actions (or failure to act) are not curable.
22 Therefore, the committee determined that a termination of Mr. Beryl's employment
23 would constitute a termination “For Cause” within the meaning of the Plan.²⁶

24 Navient's theory at trial was that Mr. Beryl's talents made him a great founder of his startup
25 corporation Earnest Inc. but did not translate at Navient in three ways: (1) he did not provide
26 budget plans on time by November 2017, and his draft plans had had unsatisfactory projections of
27 loss; (2) when he finally produced an acceptable plan on January 22, 2018, he badmouthed it; and
28 (3) he renegotiated his salary and his non-compete agreement.²⁷ As to (1) and (2), the evidence

24 ²⁵ *Id.*, § 1.03 – ECF No. 100-1 at 25 (Navient-LB 000444).

25 ²⁶ Trial Ex. 9 at 1 (Navient-LB 000462).

26 ²⁷ Defs.' Closing Arg., RT 10/28/2022 at 742:14–753:20; Trial Ex. 25 (Navient-LB 000555–56)
27 (11/28/2017 email from Tim Hynes to Jack Remondi about Mr. Beryl's renegotiation of deal); Hynes
Test., RT 10/28/22 at 613:3–614:1 (timeline for budget plan was end of November 2017), 614:4–
615:21 (disagreed with Mr. Beryl that budget required months of work), 616:7–618:10 (Mr. Beryl's
renegotiation of his compensation was unusual and a headache), 631:13–646:4 (Mr. Beryl sent a series

1 showed that Mr. Beryl and his team worked very hard to deliver budget plans, putting in long days
 2 over the holidays during a time when his wife gave birth.²⁸ No evidence suggested willfulness on
 3 his part. There were no emails or communications about any deadlines. There was no notice, no
 4 warning, and no opportunity to address any failure. Navient acknowledged that Mr. Beryl's
 5 budgets were comprehensive.²⁹ In fact, Navient adopted the numbers in Mr. Beryl's January 22
 6 plan and exceeded its budget by at least \$10 million, proving Mr. Beryl right.³⁰

7 As to (3), there was no evidence — except for Mr. Hynes's testimony that it was a headache —
 8 that Mr. Beryl failed to perform his responsibilities by renegotiating his compensation package.
 9 Navient did not disclose before the acquisition that Mr. Beryl and his team would have to shoulder
 10 additional expenses that they did not have before the acquisition.³¹ Mr. Beryl negotiated better
 11 compensation packages for his team, not just himself, and Navient agreed to them in January 2018.³²

12 CONCLUSIONS OF LAW

13 The plaintiff has two ERISA claims: (1) wrongful denial of benefits under ERISA §
 14 502(a)(1)(B) and (2) breach of fiduciary duty under ERISA § 502(a)(3). He also claims waiting-
 15 time penalties under California Labor Code § 203.³³

16 Section 502(a)(3) "is a 'catchall' provision which provides relief only for injuries that are not
 17 otherwise adequately provided for." *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1475 (9th Cir.
 18 1997), *aff'd*, 525 U.S. 299 (1999), and overruled on other grounds by *Lacey v. Maricopa Cnty.*,

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 21 of unacceptable budgets in November, December, and January), 646:5–648:3 (Mr. Beryl sent an
 22 acceptable plan on January 22, 2018), 647:9–648:20 (Mr. Beryl and his team did not think that the
 23 January 22 plan was achievable); Trial. Ex. 16 (Navient-LB 000717–22) (Beryl email forwarding
 24 January 22 plan with his recommendations).

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 28 ²⁸ See, e.g., Trial Ex. 16 (Navient-LB 000717–22).

²⁹ Hynes Test., RT 10/28/22 at 678:11–679:2 (no notice or warnings), 706:6–17 (no emails about the
 29 timeframe), 708:23–709:7 (comprehensive); Beryl Test., RT 10/25/22 at 61:17–21, 70:13–107:17.

³⁰ Hynes Test., RT 10/28/22 at 696:19–698:3 (Mr. Hynes adopted Mr. Beryl's numbers on January 30,
 30 2018), 698:4–9 (over budget); Trial Ex. 35 (Hynes plan).

³¹ *Id.* at 681:9–683:6.

³² Hynes Test., RT 10/28/22 at 616:7–618:10; Beryl Test., RT 10/25/22 at 61:17–21, 70:13–73:25.

³³ Compl. – ECF No. 1 at 11–12 (¶¶ 44–56).

1 693 F.3d 896 (9th Cir. 2012). And “equitable relief under section 1132(a)(3) [ERISA § 502(a)(3)]
2 is not ‘appropriate’” when ERISA § 502(a)(1)(B) provides an adequate remedy. *Id.* at 1475. Thus,
3 the court addresses the plaintiff’s claim under § 502(a)(1)(B) first, then his claim under §
4 502(a)(3), and finally his claim to waiting-time penalties under California Labor § 203. The court
5 concludes that Navient wrongfully failed to pay Mr. Beryl the following amounts: (1) under the
6 Severance Plan, \$800,000 (based on a salary and annual bonus of \$400,000 each and a multiplier
7 of one), \$33,333 for the target bonus for 2018,³⁴ and \$54,000 (the eighteen-month value of lost
8 medical, dental, and vision benefits), and (2) \$33,333.33 in waiting-time penalties under
9 California Labor § 203. The total is \$920,666.33.

10 Section 502 of ERISA provides that a plan beneficiary may sue in federal court “to recover
11 benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or
12 to clarify his rights to future benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B);
13 *Aetna Health Inc. v. Davila*, 542 U.S. 200, 210 (2004) (ERISA § 502(a)(1)(B) “is relatively
14 straightforward. If a participant or beneficiary believes that benefits promised to him under the
15 terms of the plan are not provided, he can bring suit seeking provision of those benefits.”). When
16 evaluating a claim that a plan administrator improperly denied benefits under an ERISA plan, the
17 court applies “a *de novo* standard unless the benefit plan gives the administrator or fiduciary
18 discretionary authority to determine eligibility for benefits or to construe the terms of the plan.”
19 *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); *Montour v. Hartford Life &*
20 *Accident Ins. Co.*, 588 F.3d 623, 629 (9th Cir. 2009) (same). “If the plan confers such discretion,
21 then the denial is reviewed for an abuse of discretion.” *Wise v. MAXIMUS Fed. Servs., Inc.*, 478 F.
22 Supp. 3d 873, 877 (N.D. Cal. 2020) (citing *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 110–11
23 (2008)).

24 When the court reviews a decision for abuse of discretion, the standard applies based on
25 whether the plan administrator had a conflict of interest. *Montour*, 588 F.3d at 629. There is often
26 a conflict of interest because the entity that funds an ERISA benefits plan also is often the entity
27

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³⁴ This amount is undisputed. Mot. – ECF No. 96 at 11; Opp’n – ECF No. 100 at 11.

1 evaluating the claim. *Id.* at 630. If there is no conflict, the court applies the usual abuse-of-
2 discretion standard. *Id.* at 629. But if there is a conflict, “the court must consider numerous case-
3 specific factors, including the administrator’s conflict of interest, and reach a decision as to
4 whether discretion has been abused by weighing and balancing those factors together.” *Id.* at 630.

5 Applying the de novo standard of review is more straightforward because no analysis of
6 possible conflict of interest is required, and “[t]he court simply proceeds to evaluate whether the
7 plan administrator correctly or incorrectly denied benefits, without reference to whether the
8 administrator operated under a conflict of interest.” *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d
9 955, 963 (9th Cir. 2006).

10 The parties agreed that the court’s review of the plan administrator’s decision is de novo.³⁵ See
11 *Rorabaugh v. Cont'l Cas. Co.*, 321 F. App’x 708, 709 (9th Cir. 2009) (“Defendants waived their
12 right to appeal the district court’s choice of the *de novo* standard of review by filing a stipulation
13 to the standard and reiterating the stipulation in their trial memorandum.”).

14 The court considers the parties’ arguments under Federal Rule of Civil Procedure 52. Rule
15 52(a)(1) provides that “[i]n an action tried on the facts without a jury . . . , the court must find the
16 facts specially and state its conclusions of law separately. The findings and conclusions may be stated
17 on the record . . . or may appear in an opinion or a memorandum of decision filed by the court.
18 Judgment must be entered under Rule 58.” In doing so, the court does not determine whether there is
19 an issue of material fact but instead “evaluate[s] the persuasiveness of conflicting testimony” and
20 makes findings of fact. *Kearney*, 175 F.3d at 1095. This trial is a “bench trial on the record,” which
21 may “consist[] of no more than the trial judge rereading [the administrative record].” *Id.*

22 Another issue is the burden of proof. “In an ERISA case that involves *de novo* review, the
23 general rule is that the plaintiff bears the burden of demonstrating that a benefit is covered.” *Wise*,
24 478 F. Supp. 3d at 887 (citing *Muniz v. Amec Constr. Mgmt., Inc.*, 623 F.3d 1290, 1294 (9th Cir.
25 2010)). In general, ERISA plans should be enforced as written. *Heimeshoff v. Hartford Life &*
26 *Accident Ins. Co.*, 571 U.S. 99, 100 (2013). But, when the issue is the exclusion of coverage under

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28 ³⁵ Joint Submission Regarding Trial of ERISA Claims – ECF No. 65 at 2.

1 an ERISA-governed plan, the defendant has the burden to show that the exclusion applies. *Wise*,
 2 478 F. Supp. 3d at 886 (citing *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1557
 3 (9th Cir. 1991) (“In insurance litigation, while the burden is on the insurer to prove a claim covered
 4 falls within an exclusion, the burden is on the insured initially to prove that an event is a claim
 5 within the scope of the basic coverage.”) (cleaned up)). The specific burden of proof is the
 6 preponderance of the evidence and “[u]nder general principles of insurance law, exclusions are
 7 construed narrowly.” *Id.* (quoting *Dowdy v. Metro. Life Ins. Co.*, 890 F.3d 802, 810 (9th Cir. 2018)).

8 Thus, to justify its reliance on the for-cause exclusion, the defendant’s burden is to show by a
 9 preponderance of the evidence that it terminated the plaintiff “For Cause” under the terms of the
 10 Plan. The parties agree that the jury’s finding — that Navient did not have cause to fire Mr. Beryl
 11 — binds the court.³⁶ Mr. Beryl thus is entitled to severance benefits under the Plan. The three
 12 issues about the entitlement to benefits under the Plan are the amount of the bonus, the multiplier
 13 that applies, and lost medical, dental, and vision benefits. The fourth issue is the entitlement to
 14 waiting-time penalties under the California Labor Code.

16 1. Bonus Amount

17 Mr. Beryl’s employment agreement defined his average bonus under the Severance Plan:

18 For purposes of the Navient Corporation Executive Severance Plan for Senior
 19 Officers, your “Average Bonus” shall equal your target annual incentive bonus until
 20 you have been paid an annual incentive bonus with respect to 2017 and, after such
 time, your “Average Bonus” shall be determined in accordance with the plan.³⁷

21 The Severance Plan has an integration clause,³⁸ but it also provides that if an eligible officer
 22 has an employment contract that provides for severance payments, that contract governs.³⁹

25

26³⁶ *Id.* at 3.

27³⁷ Trial Ex. 1 – ECF No. 100-1 at 5 (Navient-LB 000394).

28³⁸ Trial Ex. 17, § 6.09 – ECF No. 100-1 at 32 (p. 8, Navient-LB 000451).

³⁹ *Id.*, § 1.03 – ECF No. 100-1 at 25 (Navient-LB 000444).

1 As discussed in the Statement, when Mr. Beryl was fired on January 24, 2018, he had not been
2 paid his 2017 bonus.⁴⁰ Under the plain language of the employment agreement, his “Average
3 Bonus” under the Severance Plan thus was his target annual incentive bonus. The jury found that
4 his annual base salary was \$400,000 and his annual bonus amount was 100 percent of his base
5 salary.⁴¹ The bonus thus is \$400,000.

6

7 **2. Multiplier**

8 The issue is whether Mr. Beryl is entitled to a multiplier on his severance payment of one or two.
9 Because his corporate title was Senior Vice President of Navient Solutions, the multiplier is one.

10 The Plan defines those eligible for benefits under the plan: “**3.01. Eligible Officers.** Officers
11 of Navient Corporation and its wholly owned subsidiaries with the corporate title of Senior Vice
12 President or above’ are eligible for benefits under this Plan. . . .”⁴² It provides for a multiplier
13 based on the Eligible Officer’s title: “The multiplier for Eligible Officers with the title of Chief
14 Executive Officer will be two (2). The multiplier for all other Eligible Officers will be one (1).”⁴³

15 Mr. Beryl’s job title is in his employment agreement: “On behalf of E Parent, Inc.[], as the
16 anticipated controlling shareholder of Earnest, Inc.[], I am pleased to offer you continued
17 employment, under revised terms, as Chief Executive Officer of Earnest located in San Francisco,
18 California. You will have the corporate title of Senior Vice President of Navient Solutions, LLC
19 (together with Navient Corporation, its parent and the parent of E Parent, hereafter ‘Navient’), and
20 you will report to Tim Hynes, Navient’s Executive Vice President, Consumer Lending.”⁴⁴

21 Mr. Beryl’s corporate title — the title that makes him an Eligible Officer under the Severance
22 Plan — is Senior Vice President of Navient Solutions. The ordinary understanding of the Plan
23 terms governing the multiplier — given the Plan definitions — is that a person with that title

24

25 ⁴⁰ Trial Ex. 37 – ECF No. 100-1 at 21 (Navient-LB 000248) (bonus paid in February 2018).

26 ⁴¹ Verdict – ECF No. 88 at 1–2.

27 ⁴² Trial Ex. 17, § 3.01 – ECF No. 100-1 at 27 (p. 3, Navient-LB 000446).

28 ⁴³ *Id.*, § 3.02(b) – ECF No. 100-1 at 27 (p. 3, Navient-LB 000446).

29 ⁴⁴ Trial Ex. 1 – ECF No. 100-1 at 4 (Navient-LB 000393).

1 receives a multiplier of one, not two. *Gilliam v. Nev. Power Co.*, 488 F.3d 1189, 1194 (9th Cir.
2 2007) (“terms in an ERISA plan should be interpreted in an ordinary and popular sense as would a
3 person of average intelligence and experience”) (cleaned up). There is no ambiguity here that
4 favors Mr. Beryl. *Barnes v. Indep. Auto. Dealers Assoc. of Cal. Health & Welfare Benefit Plan*, 64
5 F.3d 1389, 1393 (9th Cir. 1995) (court “must construe ambiguities in an ERISA plan against the
6 drafter and in favor of the insured”). (The court thus does not need to consider the testimony of
7 Navient’s CEO Jack Remondi, who testified that the Severance Plan was the Navient executive
8 officers’ plan and that the multiplier of two thus did not apply to Mr. Beryl.⁴⁵)

9

10 **3. Medical, Dental, and Vision Benefits**

11 Mr. Beryl asks for \$72,000, which is the cash value of the medical, dental, and vision benefits
12 that he lost for twenty-four months. The court awards \$54,000, the eighteen-month value.

13 The Severance Plan provides that Eligible Officers can continue to participate in insurance
14 plans: “For eighteen (18) months (or twenty-four (24) months if the Eligible Officer is the Chief
15 Executive Officer) following the Eligible Officer’s Termination Date, the Eligible Officer and his or
16 her eligible dependents or survivors will be entitled to continue to participate in any medical, dental
17 and vision insurance plans generally available to the senior management of the Corporation. . . .”
18 An Eligible Officer’s entitlement to insurance benefits ends if he becomes eligible for coverage
19 with a subsequent employer.⁴⁶

20 Navient contends that the court can award only “continued plan participation” (for up to eighteen
21 months for someone who is not a CEO) because the plan does not provide for a reimbursement for
22 replacement coverage.⁴⁷ The Plan does not provide for reimbursement. But Navient did not have
23 cause to terminate Mr. Beryl, “continued participation” is no longer a viable remedy, and Navient’s
24 position would leave Mr. Beryl without a remedy for Navient’s withholding of benefits.

25

26 ⁴⁵ Remondi Test., Ex. D. to Sullivan Decl. – ECF No. 100-1 at 45:1–46:7 (pp. 406:1–407:7).

27 ⁴⁶ Trial Ex. 17, § 3.02(a), (c) – ECF 100-1 at 27–28 (pp. 3–4, Navient-LB 000446–000447).

28 ⁴⁷ Opp’n – ECF No. 100 at 14.

1 Normally an ERISA plaintiff is entitled to the benefits that the plan denied improperly. 29
 2 U.S.C. § 1132(a)(1)(B) (a plan beneficiary may sue in federal court “to recover benefits due to him
 3 under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights
 4 to future benefits under the terms of the plan”); *Filarsky v. Life Ins. Co. of N. Am.*, 391 F. Supp. 3d
 5 928, 938 (N.D. Cal. 2019) (a claimant must prove his entitlement to benefits by a preponderance of
 6 the evidence). But here, where there is no direct recompense under ERISA § 502(a)(1)(B), the court
 7 can award equitable relief for Mr. Beryl’s second claim under ERISA § 502(a)(3).

8 Section 502(a)(3) provides that a participant or beneficiary may bring a claim “(A) to enjoin
 9 any act or practice which violates any provision of this subchapter or the terms of the plan, or (B)
 10 to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any
 11 provisions of this subchapter or the terms of the plan.” 29 U.S.C. § 1132(a)(3). In his claim under
 12 § 502(a)(3), the plaintiff cites “losses compensable under ERISA, including but not limited to loss
 13 of severance benefits.”⁴⁸

14 Mr. Beryl is not entitled to relief under § 502(a)(3) to the extent that the claim duplicates his
 15 claim under § 502(a)(1)(B). “A claim for relief under section (a)(1)(B) does not automatically
 16 preclude a claim under section (a)(3), especially at the pleading stage. Courts of this district have
 17 found that (a)(3) claims remain viable even when an (a)(1)(B) claim is asserted, particularly where
 18 the relief sought in connection with each claim is distinct.” *Bush v. Liberty Life Assurance Co. of*
 19 *Bos.*, 77 F. Supp. 3d 900, 908 (N.D. Cal. 2015). But where a plaintiff simply seeks “equitable
 20 relief based on what Plaintiff contends he is owed under the Plan,” the plaintiff cannot maintain a
 21 § 502(a)(3) claim in addition to a § 502(1)(B) claim. *Ehrlich v. Hartford Life & Accident Ins. Co.*,
 22 No. 20-cv-02284-JST, 2021 WL 4472845, at *5 (N.D. Cal. May 7, 2021); *see Moyle v. Liberty*
 23 *Mut. Ret. Ben. Plan*, 823 F.3d 948, 959 (9th Cir. 2016), *as amended on denial of reh’g and reh’g*

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 25
 26 ⁴⁸ Compl. – ECF No. 1 at 12 (¶ 56) (also seeking attorney’s fees and costs). Presumably those will be
 27 the subject of a different motion after entry of judgment. In any event, because ERISA § 502(g)
 28 provides an adequate remedy for attorney’s fees and cost, a separate claim for attorney’s fees and costs
 associated with investigating and prosecuting an ERISA claim does not provide a basis to maintain a
 claim under § 502(a)(3). *Ehrlich*, 2021 WL 4472845, at *5.

1 *en banc* (Aug. 18, 2016) (“equitable relief under § 1132(a)(3) is not available if § 1132(a)(1)(B)
2 provides an adequate remedy”).

3 The monetary or nonmonetary character of the relief sought is not the critical issue. *See id.* at 960
4 (“The Supreme Court’s decision in [*CIGNA Corp. v. Amara*, 563 U.S. 421 (2011)] makes it very
5 clear that remedies such as reformation, surcharge, estoppel, and restitution are traditionally equitable
6 remedies, and the fact that they take a monetary form does not alter this classification.”). Instead, the
7 key issue is whether the “equitable relief [is] based on what Plaintiff contends he is owed under the
8 Plan.” *Ehrlich*, 2021 WL 4472845, at *5 (holding that “the relief Plaintiff seeks as an ‘equitable
9 surcharge’ is duplicative of the relief he seeks under Section 502(a)(1)(B)” because the claimed relief
10 was based on what he is owed under the plan and the claimed losses consisted of unpaid benefits).

11 Here, most of Mr. Beryl’s asserted entitlement to relief under claim two duplicates the relief he
12 seeks under claim one and fails as a matter of law. But if his claim for reimbursement of the
13 insurance benefits fails under § 502(a)(1)(B), it survives under § 502(a)(3).

14 Mr. Beryl calculated the lost value of his benefits as \$72,000. If that is based on twenty-four
15 months, then the per-month value is \$3,000, and the eighteen-month value is \$54,000. If it is based
16 on the value up to the time he became eligible for benefits (but not more than eighteen months),
17 then it remains \$72,000. Based on the briefing, which references twenty-four months, it appears
18 that \$54,000 is the correct answer.⁴⁹ Mr. Beryl may submit a supplemental declaration within
19 seven days if this is not the case.

20
21 **4. Waiting-Time Penalties**

22 Mr. Beryl asks for \$33,333.33 in waiting-time penalties under California Labor § 203.⁵⁰

23 Under the California Labor Code, “[i]f an employer discharges an employee, the wages earned
24 and unpaid at the time of discharge are due and payable immediately.” Cal. Labor Code § 201(a). “If
25 an employer willfully fails to pay, without abatement or deduction, . . . any wages of any employee

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27 ⁴⁹ Mot. – ECF No. 96 at 11–12; Reply – ECF No. 101 at 11.

28 ⁵⁰ Mot. – ECF No. 96 at 15.

1 who is discharged or who quits,” the employee’s wages continue as a penalty until paid, for up to
2 thirty days. *Id.*; *Mamika v. Barka*, 68 Cal. App. 4th 487, 492 (1998); *see McLean v. California*, 1 Cal.
3 5th 615, 619 (2016) (applying rule to employees who retire). That amount here — based on Mr.
4 Beryl’s base pay of \$400,000 — is \$33,333.33 for thirty days of waiting-time penalties.

5 “Willfully” means that the employer intentionally failed or refused to pay a wage obligation.
6 Cal. Code. Regs. tit. 8 § 13520 (“[a] willful failure to pay wages within the meaning of Labor
7 Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when
8 those wages are due”); *Baker v. Am. Horticultural Supply, Inc.*, 186 Cal. App. 4th 1059, 1076
9 (2010); *Woods v. Vector Mktg. Corp.*, No. C-14-0264 EMC, 2015 WL 2453202, at *4 (N.D. Cal.
10 May 22, 2015) (citing *Amaral v. Cintas Corp.* No. 2, 163 Cal. App. 4th 1157, 1201 (2008) (“The
11 settled meaning of willful, as used in section 203, is that an employer has intentionally failed or
12 refused to perform an act which was required to be done.”)). The term “willful” does not require a
13 plaintiff to show that an employer knew its obligation and then intentionally refused to act. *Baker*,
14 186 Cal. App. 4th at 1075 (“[t]he knowledge requirement would be difficult to prove and would
15 encourage [employers] to remain ignorant of their obligations” if “willful” were defined to require
16 a knowing and intentional refusal to act).

17 That said, a good-faith dispute that wages are due “will preclude imposition of waiting time
18 penalties under Section 203.” Cal. Code. Regs. tit. 8 § 13520. A good-faith dispute exists “when
19 an employer presents a defense, based in law or fact which, if successful, would preclude any
20 recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not
21 preclude a finding that a good faith dispute did exist. Defenses presented which, under all the
22 circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith,
23 will preclude a finding of a ‘good faith dispute.’” *Id.* § 13520(a); *see Villalpando v. Exel Direct*
24 *Inc.*, Case No. 12-cv-04137-JCS, 2015 WL 5179486, at *36 (N.D. Cal. Sept. 3, 2015) (“The
25 willfulness requirement in section 203 is subject to a good faith defense under California Code of
26 Regulations Title 8, section 13250. . . .”).

27 Here, Mr. Beryl established at trial that Navient intentionally failed to pay him wages. The
28 issue is whether Navient presented a good-faith defense that would preclude Mr. Beryl’s recovery.

1 It presented a defense: Mr. Beryl — a good founder — was not a good employee (in part because
 2 of his failure to meet deadlines and in part because of his renegotiation of salary and 2018
 3 financial targets). Thus, it fired him.⁵¹ But the jury rejected Navient’s theory that this context
 4 established good cause to fire Mr. Beryl. That does not end the § 203 inquiry: the issue is whether
 5 Navient’s defense was, “under all the circumstances, . . . unsupported by any evidence, . . .
 6 unreasonable, or . . . presented in bad faith, . . . [thus] preclude[ing] a finding of a ‘good faith
 7 dispute.’” Cal. Code. Regs. tit. 8 § 13520(a).

8 The analysis begins with the definition of “For Cause” in the Severance Plan:

9 **2.04. “For Cause”** means a determination by the Committee (as defined herein)
 10 that there has been a willful and continuing failure of an Eligible Officer to perform
 11 substantially his duties and responsibilities (other than as a result of Eligible
 12 Officer’s death or Disability) and, if in the judgment of the Committee such willful
 13 and continuing failure may be cured by an Eligible Officer, that such failure has not
 14 been cured by an Eligible Officer within ten (10) business days after written notice
 15 of such was given to Eligible Officer by the Committee, or that Eligible Officer has
 16 committed an act of Misconduct (as defined below). For purposes of this Plan,
 17 “Misconduct” means: (a) embezzlement, fraud, conviction of a felony crime,
 18 pleading guilty or nolo contendere to a felony crime, or breach of fiduciary duty or
 19 deliberate disregard of the Corporation’s Code of Business Code; (b) personal
 20 dishonesty of Eligible Officer materially injurious to the Corporation; (c) an
 21 unauthorized disclosure of any Proprietary Information; or (d) competing with the
 22 Corporation while employed by the Corporation or during the Restricted Period, in
 23 contravention of the non-competition and non-solicitation agreements substantially
 24 in the form provided in Exhibit C upon termination of employment.⁵²

25 Because the definition of “For Cause” functions as an exclusion, the court construes the term
 26 narrowly and resolves ambiguities against the drafter, Navient. *Wise*, 478 F. Supp. 3d at 886.

27 When the Fiduciary Committee fired Mr. Beryl, it determined that his “actions (or failure to
 28 act) constitute a willful and continuing failure to substantially perform his duties” as Earnest’s
 CEO and that “such actions (or failure to act) are not curable.” It predicated that determination of
 “for cause” on Mr. Hynes’s explanation that Mr. Beryl (1) “had spent significant time and

⁵¹ Navient Proposed Findings of Fact – ECF No. 49-8 at 5–6 (¶¶ 4–12); *see infra* (recounting trial testimony).

⁵² Trial Ex. 17, § 2.04 – ECF No. 100-1 at 26 (p. 2, Navient-LB 000445); Jury Instr. – ECF No. 81 at 13.

1 resources attempting to renegotiate his personal compensation and the financial targets established
2 for Earnest, both of which had been agreed upon . . . prior to the acquisition,” (2) “during this
3 time, . . . repeatedly missed deadlines for providing a detailed 2018 business plan for Earnest,” and
4 (3) “to-date had not provided a detailed 2018 business plan for Earnest.”⁵³

5 First, as set forth in the Findings of Fact, the evidence did not support Navient’s view that Mr.
6 Beryl’s performance was substandard in three ways: (1) he did not provide budget plans by
7 November 2017 and did not project loss satisfactorily; (2) when he produced an acceptable plan
8 on January 22, 2018, he badmouthed it; and (3) he renegotiated his salary and his non-compete
9 agreement. As to (1) and (2), Mr. Beryl and his team worked long days to deliver budget plans that
10 were comprehensive and apparently accurate. There were no deadlines, no communications about
11 issues, and no opportunity to address any failure. It is inaccurate that Mr. Beryl had not provided a
12 detailed 2018 plan. As to (3), there was no evidence that Mr. Beryl failed to perform his
13 responsibilities by renegotiating his team’s compensation package.

14 Second, Navient contends that Mr. Beryl — apparently by successfully renegotiating his
15 team’s compensation package — breached “his fiduciary duty to Navient Corp. and Earnest LLC
16 by placing his own financial interests above those of the company” and “committed an act of
17 misconduct [presumably under the Severance Plan], namely, a breach of the duties of good faith
18 and fair dealing contained in the agreement to sell Earnest” and his employment contract.⁵⁴ The
19 Severance Plan defines “misconduct” (e.g., a felony, embezzlement, a breach of fiduciary duty).⁵⁵
20 The definition does not include breaching a duty of good faith. Fiduciary duties and the duties of
21 good faith and fair dealing are, in general, distinct concepts. For example, in *Vu v. Prudential*
22 *Prop. & Cas. Ins. Co.*, the court explained that the “unequal bargaining power” that characterizes
23 the insurer-insured relationship has led the courts to impose “special and heightened” duties, but

24
25 ⁵³ Trial Ex. 9 at 1 (Navient-LB 000462); *see* Navient Proposed Findings of Fact & Conclusions of Law
26 – ECF No. 49-8 at 5–6 (¶¶ 4–12) (Mr. Beryl spent his time renegotiating his compensation and
Earnest’s 2018 financial goals, missed deadlines, and placed his financial interests ahead of the
company).

27 ⁵⁴ Navient Proposed Findings of Fact & Conclusions of Law – ECF No. 49-8 at 6 (¶¶ 11–12).

28 ⁵⁵ Trial Ex. 17, § 2.04 – ECF No. 100-1 at 26 (p. 2, Navient-LB 000445); Jury Instr. – ECF No. 81 at 13.

1 “[w]hile these ‘special’ duties are akin to, and often resemble, duties which are also owed by
2 fiduciaries, the fiduciary-like duties arise because of the unique nature of the insurance contract,
3 not because the insurer is a fiduciary.” 26 Cal. 4th 1142, 1151 (2001); *see also New Plumbing*
4 *Contractors, Inc. v. Nationwide Mut. Ins. Co.*, 7 Cal. App. 4th 1088, 1096 (1992) (“Even assuming
5 a fiduciary-type relationship exists [between an insurer and an insured], neither the duty nor the
6 covenant of good faith and fair dealing extend beyond the terms of the insurance contract in force
7 between the parties.”).

8 Given that exclusionary terms are construed narrowly, *Wise*, 478 F. Supp. 3d at 886, the breach
9 of the duty of good faith and fair dealing is not the equivalent of the breach of a fiduciary duty.
10 Moreover, negotiating a better compensation package — that Navient agreed to — is not a breach
11 of the duty of good faith. At least, Navient presents no legal analysis to show that it is.

12 Relatedly, the existence of a fiduciary duty is a question of law, and the breach of a fiduciary
13 duty is a question of fact. *Marzec v. Cal. Pub. Emps. Ret. Sys.*, 236 Cal. App. 4th 889, 915 (2015).
14 Officers or directors of a wholly owned subsidiary owe a fiduciary duty to the parent corporation.
15 *Thomas Weisel Partners LLC v. BNP Paribas*, No. C 07-6198 MHP, 2010 WL 1267744, at *5
16 (N.D. Cal. Apr. 1, 2010) (“[a] fiduciary of a subsidiary also owes a fiduciary duty to the
17 subsidiary’s parent corporation”); *PQ Labs, Inc. v. Qi*, No. 12-0450 CW, 2014 WL 334453, at *12
18 (N.D. Cal. Jan. 29, 2014) (employee owed fiduciary duty to employer, a subsidiary of parent
19 corporation, and the parent). Mr. Beryl had a fiduciary duty to Navient Corporation as a Senior Vice
20 President of Navient Solutions, LLC, a subsidiary of Navient Corporation. But successful
21 negotiation of his team’s compensation package is not a breach of that duty.

22 The evidence did suggest that Mr. Beryl’s pushing for more compensation — for himself and
23 his team — and his pushing back on budgets did not sit well with Navient, which perhaps
24 experienced him ultimately as a bad fit. That may be a reason to fire someone. But it was not
25 “cause” under the Severance Plan.

26 That does not end the inquiry: an unsuccessful defense is not necessarily inconsistent with a
27 good-faith dispute. Cal. Code. Regs. tit. 8 § 13520(a). But there was no evidence of any breach of a
28 fiduciary duty by Mr. Beryl or that he had a “willful and continuing failure . . . to perform

1 substantially his duties and responsibilities.”⁵⁶ The undisputed evidence was that Mr. Beryl worked
2 tirelessly and was correct in his assessment of the budget. The Severance Plan contemplated
3 warnings and an opportunity to cure, but there was no notice of deadlines or deficiencies. This at
4 minimum is unreasonable.

5 In sum, Navient did not establish its good-faith-dispute defense. Its denial of benefits under the
6 Severance Plan defense was, “under all the circumstances, . . . unsupported by any evidence . . .
7 [and] unreasonable, . . . which . . . preclude[s] a finding of a ‘good faith dispute.’” Cal. Code. Regs.
8 tit. 8 § 13520(a). The court awards \$33,333.33 in waiting-time penalties.

9

10 CONCLUSION

11

12 The amounts owed to Mr. Beryl are as follows (the first three under the Severance Plan and the
13 last under Cal. Labor Code § 203): \$800,000 (a salary and annual bonus of \$400,000 each and a
14 multiplier of one), \$33,333 for the target bonus for 2018, \$54,000 (the eighteen-month value of
15 lost medical, dental, and vision benefits), and \$33,333.33 in waiting-time penalties under
16 California Labor § 203. The total is \$920,666.33.

17

18 If the court’s math is wrong on the \$54,000 for insurance benefits, Mr. Beryl must say so
19 within seven days. Also within seven days, the parties must submit a proposed form of judgment
20 for the jury trial and the bench trial.

21

IT IS SO ORDERED.

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Dated: April 11, 2023

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LAUREL BEELER
United States Magistrate Judge

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⁵⁶ Navient Proposed Findings of Fact & Conclusions of Law – ECF No. 49-8 at 5–6 (¶¶ 4–12); Trial
Ex. 17, § 2.04 – ECF No. 100-1 at 26 (p. 2, Navient-LB 000445).